

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL).

January 28, 2000

Dear Xxxxx:

This letter is in response to your letter to Governor Ryan dated January 18, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing this letter in the hope that you can grant some tax relief to my company. COMPANY provides temporary sources of power, temperature control and oil free compressed air to customers throughout North America. From May 1999 to September 1999, we rented (43) 1250kW generators, (30) diesel fuel tanks and (30) transformers to BUSINESS in order to provide backup power for a peak shaving application at two of their power stations in CITY1 AND CITY2. Peak shaving jobs require generators (and related equipment) to be installed on the job site by our technicians. The generators remained on standby until the power draw on the utility company reached certain peak levels. At this point, our technicians were dispatched to BUSINESS to start up the generators, remaining on site until the generators were shut down. This job was of vital importance to the State, providing the utility company with the extra power needed to maintain constant electrical flow to local Illinois communities and industrial plants.

The State of Illinois imposes a use tax on equipment/materials imported into the state for use or consumption. Since the leasing of equipment results in a use by COMPANY, use tax is due on the depreciated value of the equipment used in Illinois. The job at BUSINESS required additional fleet purchases by COMPANY. Based on the use of these large units, many of which were recent purchases, COMPANY is faced with an extremely large amount of use tax due to the State of Illinois.

I would like to request that you consider granting COMPANY a waiver for or a reduction in the use taxes that are owed to the State of Illinois. Without services like ours, cities like CITY2 would experience 'brown outs'. 'Brown outs' occur when the local utility

companies can not meet the demand for electrical power from its customers and the whole electric grid basically shuts down.

BUSINESS would like for us to repeat the job again next year. However, if we can not get some type of tax relief, we will not be able to provide them with a competitive bid, especially since our competitors have not voluntarily paid this tax.

Your consideration of our request will be greatly appreciated. Thank you.

The Department of Revenue is unable to waive the Use Tax on the items of tangible personal property that you are leasing to BUSINESS. Nor is there currently an exemption from tax for the use of such equipment in Illinois.

All persons who use generators, diesel fuel tanks and transformers in Illinois are required to pay Use Tax on the purchases of such items. As you know, lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. Please note that the tax is equipment specific and not use specific. If you bring the same equipment that you have paid Illinois Use Tax upon into Illinois at a later date for lease, you do not owe Use Tax again.

Please note that Section 150.105, Rate and Base of Tax, states that the rate of the Use Tax is 6.25% of the selling price of the tangible personal property involved. If the property purchased at retail from a retailer is acquired and used outside Illinois before being brought into Illinois for taxable use here, the "selling price" on which the tax is computed shall be reduced by a reasonable allowance for depreciation for the period of such prior out-of-State use.

Section 150.310, states that the Use Tax shall not apply to the use, in Illinois, of tangible personal property that is acquired outside Illinois and brought into Illinois by a person who has already paid a tax in another state in respect to the sale, purchase, or use of such property to the extent of the amount of such tax properly due and paid in such other state. If the amount of tax properly due and paid to another state is in excess of the tax obligation in Illinois, then the person bringing the tangible personal property into Illinois would owe Illinois no tax. However, if the amount of tax properly due and paid to another state is less than the tax obligation in Illinois, then the person bringing the tangible personal property into Illinois would owe Illinois Use Tax to the extent that the Illinois tax obligation exceeds the amount of taxes properly due and paid to the other state.

I'm sorry that we cannot be of more help. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the

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Department's Taxpayer Information Division at (217) 782-3336, or call our TDD at 1 (800) 544-5304.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.